

(b) A retail station may petition the commission to adjust the maximum pre-tax retail price of gasoline in the event of a change in the maximum pre-tax wholesale price for regular unleaded gasoline, or the value of the retail marketing margin factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustment shall be determined as follows:

(1) The value of the retail marketing margin factor for regular unleaded gasoline established in section 486H-14(c) shall be adjusted upward only if such value is less than the average of the difference over the prior twelve-month period between:

(A) The “through retail outlets” price for sales to end users for regular unleaded gasoline; and

(B) The dealer tank wagon price, for sales for resale for regular unleaded gasoline, for Petroleum Administration for Defense (PAD) District V,

as reported and published by the Energy Information Administration or its successor in Table 31 - “Motor Gasoline Prices by Grade, Sales Type, PAD District, and State” or other source containing the same information.

(c) If the commission adjusts the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline, the commission shall publish its findings and the adjusted prices by means that shall include the Internet website for the State of Hawaii.

(d) In its discretion and without a petition having been filed, the commission may adjust the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline if an adjustment is necessary as a result of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, the neighbor island wholesale adjustment factor, or the retail marketing margin factor.

(e) Nothing in section 486H-13 or 486H-14 shall be construed to prohibit the filing of a petition during the first year after July 1, 2004. [L 2002, c 77, pt of §2(1)]

Note

Gasoline price cap report, etc. (2003). L 2002, c 77, §5.

Revision Note

“July 1, 2004” substituted for “the effective date of this section”.

CHAPTER 486I PETROLEUM INDUSTRY INFORMATION REPORTING

REPEALED. L 1997, c 257, §5.

[CHAPTER 486J] PETROLEUM INDUSTRY INFORMATION REPORTING ACT

PART I. GENERALLY

SECTION

486J-1 DEFINITIONS

486J-2 DISTRIBUTORS TO REGISTER

486J-3 STATEMENTS

486J-4 INFORMATIONAL REPORTS

- 486J-5 ANALYSIS OF INFORMATION; AUDITS AND INSPECTIONS; SUMMARY REPORTS
- 486J-6 CONFIDENTIAL INFORMATION
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- 486J-8 SHARING OF INFORMATION OBTAINED BY THE COMMISSIONER
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- 486J-10 ETHANOL CONTENT REQUIREMENT
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PART II. PETROLEUM ADVISORY COUNCIL

- 486J-21 PETROLEUM ADVISORY COUNCIL; ESTABLISHMENT
- 486J-22 DUTIES OF THE COUNCIL

Note

Gasoline price cap report, etc. (2003). L 2002, c 77, §5.

PART I. GENERALLY

§486J-1 Definitions. As used in this chapter:

“Aviation fuel” means and includes all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

“Competitively priced” means fuel-grade ethanol for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average posted rack price of unleaded gasoline of comparable grade published in the State.

“Department” means the department of business, economic development, and tourism.

“Director” means the director of business, economic development, and tourism.

“Distributor” means and includes:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the State, and sells it at wholesale or at retail, or who utilizes it directly in the manufacture of products or for the generation of power;
- (2) Every person who imports or causes to be imported into the State or exports or causes to be exported from the State, any fuel; and
- (3) Every person who acquires fuel through exchanges with another distributor.

“Energy” means work or heat that is, or may be, produced from any fuel or source whatsoever.

“Fuel” means and includes fuels whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the State or that may be exported therefrom; including petroleum and petroleum products and gases, coal, coal tar, vegetable ferments, and all fuel alcohols.

“Major marketer” means any person who sells natural gas, propane, synthetic natural gas or oil in amounts determined by the department as having a major effect on energy supplies.

“Major oil producer” means any person who produces oil in amounts determined by the department as having a major effect on energy supplies.

“Major oil storer” means any person who stores oil or other petroleum products in amounts determined by the department as having a major effect on energy supplies.

“Major oil transporter” means any person who transports oil or other petroleum products in amounts determined by the department as having a major effect on energy supplies.

“Month” or “calendar month” means each full month of the calendar year.

“Person”, means any person, firm, association, organization, partnership, business trust, corporation, or company. “Person” also includes any city, county, public district or agency, the State or any department or agency thereof, and the United States to the extent authorized by federal law.

“Petroleum commissioner” or “commissioner” means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism.

“Refiner” means any person who owns, operates, or controls the operations of one or more refineries.

“Refinery” means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products. [L 1997, c 257, pt of §2; am L 2002, c 77, §3(1)]

§486J-2 Distributors to register. Every distributor, and any person before becoming a distributor, shall register as such with the commissioner on forms to be prescribed, prepared, and furnished by the commissioner. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

§486J-3 Statements. (a) Each distributor shall, at such reporting dates as the commissioner may establish, file with the commissioner, on forms prescribed, prepared, and furnished by the commissioner, a certified statement showing separately for each county and for the islands of Lanai and Molokai within which and whereon fuel is sold or used during the last preceding reporting period, the following:

- (1) The total number of gallons or units of fuel refined, manufactured, or compounded by the distributor within the State and sold or used by the distributor, and if for ultimate use in another county or on another island, the name of that county or island;
- (2) The total number of gallons or units of fuel imported or exported by the distributor or sold or used by the distributor, and if for ultimate use in another county or on another island, the name of that county or island;
- (3) The total number of gallons or units of fuel sold as liquid fuel, aviation fuel, diesel fuel, and other types of fuel as required by the commissioner;
- (4) The total number of gallons or units of fuel and the types thereof sold to: federal, state, and county agencies, ships stores, or base exchanges, commercial agricultural accounts, commercial nonagricultural accounts, retail dealers, and other customers as required by the commissioner;
- (5) Monthly Hawaii weighted average prices and sales volumes of finished leaded regular, unleaded regular, and premium motor gasoline, and of each other grade of gasoline sold through company-operated retail outlets, to other end-users, and to wholesale customers;
- (6) Monthly Hawaii weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil; and
- (7) Monthly Hawaii weighted average prices and sales volumes for retail sales and wholesale sales of No. 1 distillate, kerosene, finished aviation

gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil, and consumer grade propane.

The commissioner shall prescribe by rule when the first report shall be submitted.

(b) In addition to the above reporting, each distributor shall file with the commissioner, Federal Form FEO-1000 or an equivalent state form to be prescribed, prepared, and furnished by the commissioner, showing the expected supply of fuel products for the coming month, and their intended distribution as categorized by Form FEO-1000 or the equivalent state form. The state form shall be supplied in the event that the Federal Mandatory Petroleum Allocation Regulations should expire, be revoked, or be amended to delete or substantially change the reporting requirements provided therein.

(c) Each major marketer shall submit to the commissioner, at a time and in a form as the commissioner shall prescribe, information including petroleum and petroleum product receipts, exchanges, inventories, and distributions. The commissioner shall prescribe by rule when the first report shall be submitted.

(d) The commissioner may request additional information as and when [the commissioner] deems necessary to perform [the commissioner's] responsibilities under this chapter. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

§486J-4 Informational reports. (a) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the commissioner, in such form as the commissioner shall prescribe, information which includes the following:

- (1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The provision of the information shall not be construed to increase and decrease any authority the commissioner may otherwise have;
- (2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions;
- (3) Refiners shall report on facility capacity and utilization and method of transportation of refinery receipts and distributions; and
- (4) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

The commissioner shall prescribe by rule when the first report shall be submitted.

(b) The commissioner may request additional information as and when [the commissioner] deems it necessary to perform [the commissioner's] responsibilities under this chapter. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

§486J-5 Analysis of information; audits and inspections; summary reports. (a) The petroleum commissioner, with the commissioner's own staff and other support staff with expertise and experience in, or with, the petroleum industry, shall gather, analyze, and interpret the information submitted to it pursuant to sections 486J-3 and 486J-4 and other information relating to the supply and price of petroleum products, with particular emphasis on motor vehicle fuels, including, but not limited to, all of the following:

- (1) The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply;
- (2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;
- (3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in Hawaii;

- (4) The prices, with particular emphasis on wholesale and retail motor fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in Hawaii and the reasons for such changes;
- (5) The income, expenses, and profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio;
- (6) The emerging trends relating to supply, demand, and conservation of petroleum and petroleum products;
- (7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products; and
- (8) The development of a petroleum and petroleum products information system in a manner which will enable the State to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

(b) The commissioner shall conduct random or periodic audits and inspections of any supplier or suppliers of oil or petroleum products to determine whether they are unnecessarily withholding supplies from the market or are violating applicable policies, laws, or rules. The commissioner may solicit assistance of the department of taxation in any such audit. The commissioner shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the commissioner is not duplicative of the data received by any of their audits or inspections which is available to the commissioner.

(c) The commissioner shall analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

(d) The commissioner shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislative session a summary, including any analysis and interpretation of the information submitted to it pursuant to this chapter, and any other activities taken by the commissioner, including civil penalties imposed and referrals of violations to the attorney general under section 486J-9. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted. At the option of the director, this report may be combined with reporting required by section 196-4(11), in the director's role as state energy resources coordinator. [L 1997, c 257, pt of §2; am L 2002, c 77, §3(2)]

§486J-6 Confidential information. (a) Confidential commercial information presented to the commissioner pursuant to this chapter shall be held in confidence by the commissioner or aggregated to the extent necessary to assure confidentiality as governed by chapter 92F, including its penalty provisions.

(b) No data or information submitted to the commissioner shall be deemed confidential if the person submitting the information or data has made it public.

(c) Unless otherwise provided by law, with respect to data provided pursuant to sections 486J-3 and 486J-4, neither the commissioner, nor any employee of the department, may do any of the following:

- (1) Use the information furnished under sections 486J-3 and 486J-4 for any purpose other than the statistical purposes for which it is supplied;
- (2) Make any publication whereby the data furnished by any particular establishment or individual under sections 486J-3 and 486J-4 can be identified; or

- (3) Permit anyone to examine the individual reports provided under sections 486J-3 and 486J-4 other than the public utilities commission, the attorney general, and the consumer advocate, and the authorized representatives and employees of each. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

§486J-7 Confidential information obtained by another state agency.

Any confidential information pertinent to the responsibilities of the commissioner specified in this chapter that is obtained by another state agency, including the department of taxation, the public utilities commission, the attorney general, and the consumer advocate, shall be available to the attorney general, the attorney general's authorized representatives, and the commissioner and shall be treated in a confidential manner. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

§486J-8 Sharing of information obtained by the commissioner.

The commissioner shall make all information obtained by the commissioner under this chapter, including confidential information, available to the attorney general, the department of taxation, the public utilities commission, the consumer advocate, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

§486J-9 Failure to timely provide information; failure to make and file statements; false statements; penalties; referral to the attorney general.

(a) The petroleum commissioner shall notify those persons who have failed to timely provide the information specified in section 486J-3 or 486J-4 or requested by the commissioner under section 486J-3 or 486J-4. If, within five days after being notified of the failure to provide the specified or requested information, the person fails to supply the specified or requested information, the person shall be subject to a civil penalty of not less than \$50,000 per day nor more than \$100,000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the commissioner regarding the information and the commissioner has held a hearing and, following a ruling by the commissioner, the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commissioner shall be subject to a civil penalty not to exceed \$500,000, and shall be deemed to have committed an unfair or deceptive act or practice in the conduct of a trade or commerce and subject to the penalties specified in chapter 480. The commissioner shall refer any matter under this subsection to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State.

(c) For the purposes of this section, "person" means, in addition to the definition contained in section 486J-1, any responsible corporate officer. [L 1997, c 257, pt of §2; am L 2002, c 77, §3(3)]

§486J-10 Ethanol content requirement.

(a) The commissioner shall adopt rules in accordance with chapter 91 to require that gasoline sold in the State for use in motor vehicles contain ten per cent ethanol by volume. The amounts of gasoline sold in the State containing ten per cent ethanol shall be in accordance with rules as the commissioner may deem appropriate. The commissioner may authorize the sale of gasoline that does not meet these requirements as provided in subsection (d).

(b) Gasoline blended with an ethanol-based product, such as ethyl tertiary butyl ether, shall be considered to be in conformance with this section if the quantity

of ethanol used in the manufacture of the ethanol-based product represents ten per cent, by volume, of the finished motor fuel.

(c) Ethanol used in the manufacture of ethanol-based gasoline additives, such as ethyl tertiary butyl ether, may be considered to contribute to the distributor's conformance with this section: provided that the total quantity of ethanol used by the distributor is an amount equal to or greater than the amount of ethanol required under this section.

(d) The commissioner may authorize the sale of gasoline that does not meet the provisions of this section:

- (1) To the extent that sufficient quantities of competitively-priced ethanol are not available to meet the minimum requirements of this section; or
- (2) In the event of any other circumstances for which the commissioner determines compliance with this section would cause undue hardship.

(e) Each distributor, at such reporting dates as the commissioner may establish, shall file with the commissioner, on forms prescribed, prepared, and furnished by the commissioner, a certified statement showing:

- (1) The price and amount of ethanol available;
- (2) The amount of ethanol-blended fuel sold by the distributor;
- (3) The amount of non-ethanol-blended gasoline sold by the distributor; and
- (4) Any other information the commissioner shall require for the purposes of compliance with this section.

(f) Provisions with respect to confidentiality of information shall be the same as provided in section 486J-7.

(g) Any distributor or any other person violating the requirements of this section shall be subject to a fine of not less than \$2 per gallon of nonconforming fuel, up to a maximum of \$10,000 per infraction.

(h) The commissioner, in accordance with chapter 91, shall adopt rules for the administration and enforcement of this section. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

[§486J-11] Powers of the public utilities commission. The public utilities commission shall have the authority and power to take any action or make any determination under this chapter, including but not limited to actions or determinations that affect persons not regulated under chapters 269, 271, and 271G, as the commission deems necessary to carry out its responsibilities or otherwise effectuate chapter 269, 271, or 271G. [L 1997, c 257, pt of §2]

§486J-12 Rules. The commissioner shall adopt, amend, or repeal such rules as [the commissioner] may deem proper to fully effectuate this chapter. [L 1997, c 257, pt of §2; am L 2002, c 77, §4]

PART II. PETROLEUM ADVISORY COUNCIL

[§486J-21] Petroleum advisory council; establishment. (a) There is established within the department for administrative purposes a voluntary petroleum advisory council, which shall be convened at the director's discretion and shall consist of the following eleven members:

- (1) Two lessee retail service station dealers;
- (2) Two independent retail service station dealers;
- (3) Two representatives of petroleum jobbers;
- (4) Two representatives of petroleum refiners;
- (5) One representative from the department of commerce and consumer affairs;

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- (6) One representative from the department of business, economic development, and tourism; and
- (7) One representative from the department of the attorney general.
- (b) The members of the council shall elect a chairperson from among their number.
- (c) The members of the council shall serve without compensation. [L 1997, c 257, pt of §2]

[§486J-22] Duties of the council. The council shall:

- (1) Advise the department of trends and activities in the retail petroleum industry that may require statutory consideration; and
- (2) Take such other action as may be necessary to ensure that the department is informed of all relevant developments in the retail petroleum industry affecting the health, safety, and welfare of the people of this State. [L 1997, c 257, pt of §2]

CHAPTER 486K HOTELS

SECTION

486K-5.5 HOTELKEEPER'S LIABILITY LIMITED FOR CERTAIN BEACH AND OCEAN ACTIVITIES

486K-5.6 HOTELKEEPER'S LIABILITY FOR PROVISION OF CERTAIN RECREATIONAL EQUIPMENT

Cross References

Food and beverage service charge disclosure, see §481B-14.
Hotel construction and remodeling tax credit, see §235-110.4.
Qualified improvement tax credit (hotel remodeling), see chapter 235D.
Tour activity providers and activity desks, see chapter 468M.

[§486K-2] Hotelkeepers lien on baggage, etc., of guests; summary ejection of delinquents.

Case Notes

Does not preclude hotel from removing hotel guest's personal belongings from hotel room and changing the room's doorlock so as to prevent hotel guest from re-entering the room without hotel's permission, upon the expiration of the license to occupy mutually agreed to by hotel guest and hotel. 10 H. App. 123, 861 P.2d 736.

[§486K-5.5] Hotelkeeper's liability limited for certain beach and ocean activities. In a claim alleging injury or loss on account of a hazardous condition on a beach or in the ocean, a hotelkeeper shall be liable to a hotel guest for damages for personal injury, death, property damage, or other loss resulting from the hotel guest going onto the beach or into the ocean for a recreational purpose, including wading, swimming, surfing, body surfing, boogie boarding, diving, or snorkeling, only when such loss or injury is caused by the hotelkeeper's failure to warn against a hazardous condition on a beach or in the ocean, known, or which should have been known to a reasonably prudent hotelkeeper, and when the hazardous condition is not known to the guest or would not have been known to a reasonably prudent guest. A hotelkeeper owes no duty and shall have no liability for conditions which were not created by the hotel to a person who is not a guest of the hotel for injury or damage resulting from any beach or ocean activity.